

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE ANTONIO RAMOS,

Plaintiff

v.

JEFFREY A. BEARD, *et al.*,

Defendants

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CIVIL NO. 1:10-CV-1533

(Judge Rambo)

(Magistrate Judge Smyser)

MEMORANDUM

Before the court is a report of the magistrate judge to whom this matter is referred in which he recommends that the motion to dismiss filed by Defendants Beard and Klopotoski (hereinafter “Defendants”) be denied. The two defendants object to the report and recommendation.

In his complaint, Plaintiff alleges that Defendants were fully aware of Eighth Amendment violations toward Plaintiff and never investigated those allegations. Defendants argue that the complaint fails to state a claim upon which relief can be granted that they were deliberately indifferent to a serious threat of harm to Plaintiff. Their basic argument is that Plaintiff’s complaint does not allege sufficient personal involvement and that liability cannot be imposed solely on the basis of respondeat superior.

The magistrate judge points out that Defendants were fully aware of the violations against him because he submitted written complaints to them and spoke to them personally and they could have investigated his complaints and did not. The magistrate judge relies upon *Atkinson v. Taylor*, 316 F.3d 257, 270-71 (3d Cir. 2003), in support of that conclusion. Defendants argue that this case is distinguishable because it was decided before *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)

and *Ashcroft v. Iqbol*, ___ U.S. ___ (2009), 129 S. Ct. 1937 (2009). They claim that Plaintiff has not pled sufficient facts that it is plausible that Defendants had notice that Plaintiff's complaints had validity.

Plaintiff sent four written complaints to Klopotoski and made a verbal complaint in the presence of both Defendants. While these facts may not ultimately support liability, they are certainly sufficient to preclude dismissal based upon an inadequate pleading of personal involvement and meet the plausibility standard required by *Twombly* and *Iqbol*.

The report and recommendation will be adopted.

s/Sylvia H. Rambo
United States District Judge

Dated: June 16, 2011.

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ORDER

In accordance with the accompanying memorandum of law, **IT IS
HEREBY ORDERED THAT:**

- 1) The court adopts the March 7, 2011 report and recommendation (doc. 55).
- 2) Defendants Beard and Klopotoski's motion to dismiss (doc. 36) is **DENIED.**
- 3) This matter is remanded to Magistrate Judge Smyser.

s/Sylvia H. Rambo
United States District Judge

Dated: June 16, 2011.